

PREVAILED

Roll Call No. \_\_\_\_\_

FAILED

Ayes \_\_\_\_\_

WITHDRAWN

Noes \_\_\_\_\_

RULED OUT OF ORDER

## HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that House Bill 1146 be amended to read as follows:

- 1       Page 1, between the enacting clause and line 1, begin a new  
2       paragraph and insert:  
3       "SECTION 1. IC 27-1-29-14 IS AMENDED TO READ AS  
4       FOLLOWS [EFFECTIVE JANUARY 1, 2001]: Sec. 14. (a) In order to  
5       be eligible for payment under this chapter, a liability of a political  
6       subdivision must arise out of a claim based upon an act or omission  
7       that takes place while the political subdivision is a member of the fund.  
8       (b) The maximum amount payable from the fund for any liability,  
9       whether or not it is covered under IC 34-13-3 (or IC 34-4-16.5 before  
10      its repeal), is:  
11       (1) ~~three five~~ hundred thousand dollars ~~(\$300,000)~~ **(\$500,000)** for  
12       injury, death, or damage suffered by any one (1) person as a result  
13       of the act or omission from which the liability arises; and  
14       (2) ~~one eight~~ million dollars ~~(\$1,000,000)~~ **(\$8,000,000)** for all  
15       injury, death, or damage suffered by all persons as a result of the  
16       act or omission from which the liability arises.  
17       (c) No amount may be paid from the fund in respect of punitive  
18       damages paid by or assessed against a member of the fund.  
19       (d) No amount may be paid from the fund in the case of a liability  
20       based upon bodily injury or property damage arising out of the  
21       discharge, dispersal, release, or escape of smoke, vapors, soot, fumes,  
22       acids, alkalis, toxic chemicals, liquids, gases, waste materials, or other  
23       irritants, contaminants, or pollutants into or upon land, the atmosphere,  
24       or any watercourse or body of water unless the discharge, dispersal,

1 release, or escape:

2 (1) is caused by an act or omission of a political subdivision that  
3 is a member of the fund; and

4 (2) occurs as a result of:

5 (A) a household hazardous waste; or

6 (B) a conditionally exempt small quantity generator (as  
7 described in 40 CFR 261.5(a);

8 collection, disposal, or recycling project conducted by or  
9 controlled by the political subdivision.

10 (e) The commissioner may pay a liability of a member of the fund  
11 in a series of annual payments. The amount of any annual payment  
12 under this subsection must be one hundred thousand dollars (\$100,000)  
13 or more, except for the final payment in a series of payments.

14 (f) The commission may negotiate a structured settlement of any  
15 claim.

16 (g) As used in this section, "household hazardous waste" means  
17 solid waste generated by households that consists of or contains a  
18 material that is:

19 (1) ignitable, as described in 40 CFR 261.21;

20 (2) corrosive, as described in 40 CFR 261.22;

21 (3) reactive, as described in 40 CFR 261.23; or

22 (4) toxic, as described in 40 CFR 261.24.

23 SECTION 2. IC 27-1-29.1-12 IS AMENDED TO READ AS  
24 FOLLOWS [EFFECTIVE JANUARY 1, 2001]: Sec. 12. (a) A liability  
25 of a member of the fund that is not a member of the political  
26 subdivision risk management fund under IC 27-1-29 does not qualify  
27 for partial payment under this chapter unless the total amount of the  
28 liability exceeds:

29 (1) ~~one~~ **eight** million dollars (~~\$1,000,000~~); (**\$8,000,000**); or

30 (2) another sum that is:

31 (A) greater than ~~one~~ **eight** million dollars (~~\$1,000,000~~);  
32 (**\$8,000,000**); and

33 (B) approved by the commission as a provision of the fund  
34 member's coverage because the fund member has underlying  
35 coverage with limits of liability that exceed ~~one~~ **eight** million  
36 dollars (~~\$1,000,000~~); (**\$8,000,000**).

37 (b) A liability of a member of the fund that is also a member of the  
38 political subdivision risk management fund under IC 27-1-29 does not  
39 qualify for partial payment under this chapter unless the amount of the  
40 liability exceeds the amount of liability payable by the commission  
41 under IC 27-1-29 under the terms of the coverage document that is  
42 issued to the fund member and applicable to the liability.

43 SECTION 3. IC 27-1-29.1-13 IS AMENDED TO READ AS  
44 FOLLOWS [EFFECTIVE JANUARY 1, 2001]: Sec. 13. The amount  
45 that is to be paid by the commission toward the satisfaction of a  
46 liability qualifying for partial payment under this chapter is determined

in STEP FOUR of the following formula:

STEP ONE: If the total amount of the liability exceeds ~~five~~  
**thirteen** million dollars (~~\$5,000,000~~), (**\$13,000,000**) subtract ~~five~~  
**thirteen** million dollars (~~\$5,000,000~~) (**\$13,000,000**) from the  
total amount of the liability.

STEP TWO: Add the remainder under STEP ONE to the  
minimum total amount figure that applies to the liability under  
section 12 of this chapter.

STEP THREE: Add to the sum determined under STEP TWO the  
total amount expended by the commission under section 16 of this  
chapter in defending the member of the fund against claims  
giving rise to the liability.

STEP FOUR: Subtract the sum determined under STEP THREE  
from the total amount of the liability.

SECTION 4. IC 27-1-29.1-20 IS AMENDED TO READ AS  
FOLLOWS [EFFECTIVE JANUARY 1, 2001]: Sec. 20. (a) The  
commission shall adopt rules under IC 4-22-2 to implement this  
chapter.

(b) The commission, in accordance with the rules adopted under  
subsection (a), may, in whole or in part, conform or limit the coverage  
provided to a member of the fund under this chapter (as described in  
the coverage document issued to the member by the commission) with  
the provisions of insurance policies providing underlying coverage to  
the fund member.

(c) In accordance with the rules adopted under subsection (a), the  
commission may provide, to a member of the fund that is not a member  
of the political subdivision risk management fund under IC 27-1-29,  
coverage of a liability that exceeds the amount of ~~one~~ **eight** million  
dollars (~~\$1,000,000~~) (**\$8,000,000**) but that is subject to reduction by  
exhaustion of the aggregate limits of liability in the fund member's  
underlying coverage.

(d) In accordance with the rules adopted under subsection (a), the  
commission may provide, to a member of the fund that is also a  
member of the political subdivision risk management fund under  
IC 27-1-29, coverage of liabilities for which no coverage is provided  
under IC 27-1-29.

(e) Except as otherwise specifically provided in this chapter, the  
commission has the same powers in the administration of the fund as  
it has in the administration of the political subdivision risk  
management fund under IC 27-1-29-7(b). A rule adopted by the  
commission to establish the procedure by which a political subdivision  
can withdraw from membership in the fund may not provide that a  
political subdivision continues to be a member of the fund more than  
twelve (12) months after the political subdivision gives notice to the  
commissioner of its intention to relinquish its membership."

Page 1, between lines 10 and 11, begin a new paragraph and insert:

"SECTION 6. IC 34-13-3-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2001]: Sec. 20. (a) A political subdivision may purchase insurance to cover the liability of itself or its employees. Any liability insurance so purchased shall be purchased by invitation to and negotiation with providers of insurance and may be purchased with other types of insurance. If such a policy is purchased, the terms of the policy govern:

(1) the rights and obligations of the political subdivision and the insurer with respect to the investigation, settlement, and defense of claims or suits brought against the political subdivision or its employees covered by the policy; and

**(2) with respect to the maximum aggregate liability limitations when the policy provisions are in excess of the limitations in section 4 of this chapter.**

However, the insurer may not enter into a settlement for an amount that exceeds the insurance coverage without the approval of the mayor, if the claim or suit is against a city, or the governing body of any other political subdivision, if the claim or suit is against such political subdivision.

(b) The state may not purchase insurance to cover the liability of the state or its employees. This subsection does not prohibit any of the following:

(1) The requiring of contractors to carry insurance.

(2) The purchase of insurance to cover losses occurring on real property owned by the public employees' retirement fund or the Indiana state teachers' retirement fund.

(3) The purchase of insurance by a separate body corporate and politic to cover the liability of itself or its employees.

(4) The purchase of casualty and liability insurance for foster parents (as defined in IC 27-1-30-4) on a group basis."

Renumber all SECTIONS consecutively.

(Reference is to HB 1146 as printed January 28, 2000.)

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Representative Dvorak